

STATE OF MICHIGAN
COURT OF APPEALS

HOMEOWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

WILLIAM R. TOLLEY, JR., and ANGELA
TOLLEY,

Defendants,

and

JASON A. WIEGAND,

Defendant-Appellant.

UNPUBLISHED

March 22, 2007

No. 271322

St. Clair Circuit Court

LC No. 05-001344-CK

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

WILDER, J. (*concurring*).

In *Burkhardt v Bailey*, 260 Mich App 636, 656, 680 NW2d 453 (2004), this Court noted that “the unilateral subjective intent of one party cannot control the terms of a contract.” This finding is consistent with the holding in *Wilkie v Auto-Owners Ins Co*, 469 Mich 41; 664 NW2d 776 (2003), cited in *Burkhardt* at p 657, that the use of the reasonable expectations doctrine to interpret an unambiguous contract was inappropriate.

In light of *Wilkie*, I would conclude that *Harrington* has been overruled insofar as *Harrington* requires examination of the insured's subjective intent or, stated another way, the insured's reasonable expectations. Nevertheless, I agree that the contract language is unambiguous, and that that reasonable minds could not differ in determining that Tolley acted intentionally “despite [her] awareness that harm was likely to follow from [her] conduct.” Accordingly, I join with the majority in affirming the trial court.

/s/ Kurtis T. Wilder